

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition for Early Termination of Probation by:)
)
)

DENISE WYNNET HENDERSON, M.D.)

Case No. 800-2017-029125

Physician's and Surgeon's Certificate No. A 67876)
)
)

OAH No. 2018101378

Petitioner)
_____)

DECISION AND ORDER

The attached Proposed Decision is hereby amended, pursuant to Government Code section 11517(c)(2)(C) to correct technical or minor changes that do not affect the factual or legal basis of the proposed decision. The proposed decision is amended as follows:

1. First Page, Case No. is corrected to read "800-2017-029125."

The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on April 12, 2019.

IT IS SO ORDERED March 15, 2019.

MEDICAL BOARD OF CALIFORNIA

By: _____

Ronald H. Lewis, M.D., Chair
Panel A

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for Early
Termination of Probation by:

DENISE HENDERSON, M.D.,

Physician's and Surgeon's Certificate
Number A 67876

Petitioner.

Case No. 800-2017-02912

OAH No. 2018101378

PROPOSED DECISION

Administrative Law Judge Tiffany L. King, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California, on January 14, 2019.

Denise Henderson, M.D., appeared on her own behalf.

Ryan Yates, Deputy Attorney General, represented the Office of the Attorney General, and appeared pursuant to Government Code section 11522.

Evidence was received, the record was closed, and the matter was submitted for decision on January 14, 2019.

FACTUAL FINDINGS

1. On March 26, 1999, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. A 67876 to Denise Henderson, M.D. (petitioner). Her certificate is current and will expire on February 28, 2019, unless renewed.

2. On September 6, 2013, an accusation was filed against petitioner alleging cause existed to discipline her certificate based on her 2012 conviction for driving under the influence (DUI), use of alcohol in a dangerous manner, unprofessional conduct, and violations of the state Medical Practice Act. Specifically, the accusation alleged petitioner was driving her vehicle while under the influence of alcohol when she struck another vehicle then fled the scene. On July 16, 2014, petitioner signed a Stipulated Settlement and

Disciplinary Order admitting the allegations, and agreed to five years of probation with terms and conditions, including: abstention from alcohol; biological fluid testing; completion of an ethics course; and psychotherapy. On September 8, 2014, the Board adopted the Stipulated Settlement and Disciplinary Order, effective October 8, 2014. Petitioner will complete her probation on October 7, 2019.

Petition

3. On January 2, 2017, petitioner filed a Petition for Termination of Probation. In her narrative statement, petitioner noted she has been fully compliant with all terms of her probation. She has not previously applied for termination of probation.

Prior Conduct

4. On October 10, 2012, in the Sacramento County Superior Court, Case No. 11T06561, petitioner pled no contest to, and was convicted of, violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level of .08 percent or greater), a misdemeanor. Imposition of sentence was suspended and petitioner was placed on informal probation for three years subject to certain terms and conditions including: payment of fines and fees, payment of restitution; participation in a work release program; and completion of DUI classes.

5. The circumstances underlying the conviction occurred on October 9, 2011, around 10:00 p.m., when an officer from the California Highway Patrol (CHP) responded to a report of a "hit and run" traffic collision. Petitioner was subsequently detained by the CHP in a nearby parking lot. Petitioner admitted she was driving her vehicle at the time of the collision. The officer observed that petitioner's eyes were red and watery, her speech was slow and slurred, and the odor of alcohol emanated from her person and breath. Petitioner admitted she had consumed one Remy Martin and one beer with dinner at a nearby restaurant around 9:30 p.m. The CHP administered field sobriety tests (FSTs), which petitioner was unable to perform successfully. Petitioner was arrested for suspicion of DUI.

Petitioner's Background, Education, Training, and Experience

6. In 1992, petitioner completed her doctorate in medicine at Temple University School of Medicine. From 1992 to 1997, she was a psychiatry resident at Baylor College of Medicine. Following graduation, petitioner worked as a general practitioner and sex offender treatment provider. Thereafter, she served as a staff psychiatrist with San Joaquin County Mental Health Services where she primarily worked with older adult patients and veterans of the Vietnam era, performing crisis intakes and participating in team evaluations.

7. From 2009 to 2014, petitioner served as the Medical Director, PTSD Program Line, Northern California Health Care System for the Department of Veterans Affairs. During this time, petitioner also founded Military Minority Matters, a non-profit group which provided support to minority veterans who had experienced discrimination and healthcare

disparities while in the military. Petitioner was forced to resign from her position as Medical Director due the probationary status of her license.

8. From November 2015 to September 2016, petitioner worked as a Staff Psychiatrist in the Outpatient Program at Kaiser Permanente. Employing evidence-based psychiatry, petitioner tapered or discontinued prescriptions for patients who were controlled substance dependent, or who tested negatively for the drug. Petitioner resigned from this position as she was “not a good fit” and did not feel supported by management.

9. Thereafter, petitioner volunteered as a clinical professor at the University of California, Davis (UC Davis), Department of Psychiatry, teaching clinical skills to third-year medical students. She also volunteered at the Gender Health Center where she helped to develop a psychiatric program. Petitioner next worked as a psychiatrist at the Gender Health Center.

10. Petitioner ceased practicing psychiatry in the summer of 2017. In August of that year, she began volunteering part-time at WEAVE where she made educational films. She is currently working on a film regarding domestic violence.

Probation Compliance

11. Petitioner has complied with all terms of her probation. By Probation Quarterly Report dated December 5, 2017, probation manager Susan Houston confirmed that petitioner has complied with the terms and conditions of probation and has obeyed all laws.

Rehabilitation

12. Petitioner is 61 years old. She has not practiced medicine since the summer of 2017. She and her sister are currently caring for a newborn foster child. Petitioner is in the process of formally adopting the child.

13. Petitioner acknowledged her conviction and her dangerous use of alcohol on the night of October 9, 2011. Although she took issue with some of statements included in the CHP report, as well as the fairness of the subsequent judicial process, petitioner did not contest that she drove her vehicle after consuming alcohol, and that she collided with another vehicle. She recognized the potential catastrophic consequences of drunk driving, and the risk her conduct posed to the health and safety of herself and others.

14. Petitioner stopped drinking alcohol altogether after the October 9, 2011, incident. Although she did not consider herself to be a regular or heavy drinker, she had family members who suffered from alcoholism and she wanted to avoid that path. To that end, petitioner installed a breathalyzer machine in her vehicle and at home. She also joined Alcoholics Anonymous (AA) and has attended over 40 AA meetings. Currently, she continues to live by the AA principles, considers herself to be “highly spiritual,” and meditates daily.

15. After her license was placed on probation, petitioner had difficulty finding work in the psychiatric field. She volunteered at UC Davis, the Gender Health Center, and WEAVE. She also volunteered with the Department of Veteran Affairs and continued to work with her non-profit, Military Minority Matters. During her time away from medicine, petitioner has gained introspection and learned to provide better care for herself.

16. Petitioner misses the practice of medicine and helping others. If her probation is terminated, she plans to start a private psychiatry practice.

Letters in Support

17. Petitioner submitted letters from Shannon, Suo, M.D., and David M. Gellerman, M.D., in support of her Petition. Dr. Suo has known petitioner for more than seven years, having worked with her at the Department of Veterans Affairs and UC Davis. Dr. Gellerman has also known petitioner for over seven years. He was the hiring manager when petitioner was hired at the Department of Veterans Affairs, and assisted petitioner with Military Minority Matters. Both doctors were aware of petitioner's conviction and probationary status with the Board. They praised petitioner for her integrity, professionalism, and dedication to helping others, and encouraged the Board to grant her Petition.

Discussion

18. Based on all of the facts and circumstances set forth above, petitioner has demonstrated that she is capable of practicing psychiatry without restrictions and without harm to the public. Petitioner is sober and has a strong support network. She has complied with all terms of her probation and has given back to her community. Petitioner has completed four years and four months of her five-year probation, which will self-terminate in October 2019. When all the evidence is considered, petitioner demonstrated sufficient rehabilitation such that there is no risk of harm to the public by granting her petition for early termination of probation.

LEGAL CONCLUSIONS

1. Under Business and Professions Code section 2307, a person whose license has been revoked, suspended or placed on probation may petition for reinstatement or modification of penalty, including modification or termination of probation. A petition for early termination of probation of three years or more may not be filed less than two years from the effective date of the Board's decision ordering the disciplinary action. (Bus. & Prof. Code, § 2307, subd. (b)(2).) Petitioner has satisfied this timing requirement as she filed her petition two years after her probation went into effect.

2. The petition must be accompanied by "at least two verified recommendations from physicians and surgeons licensed in any state who have personal knowledge of the

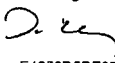
activities of the petitioner since the disciplinary penalty was imposed.” (Bus. & Prof. Code, § 2307, subd. (c).) In reviewing the petition, consideration may be given to “all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner’s activities during the time the certificate was in good standing, and the petitioner’s rehabilitative efforts, general reputation for truth, and professional ability.” (Bus. & Prof. Code, § 2307, subd. (e).)

3. Petitioner bears the burden of establishing her fitness for reinstatement or modification of penalty, including modification or termination of probation. (Evid. Code, § 500.) The factors described above have been considered. As set forth in the Factual Findings and Legal Conclusions as a whole and, particularly as discussed in Factual Finding 18, petitioner has met her burden of establishing fitness for early termination of probation by clear and convincing evidence.

ORDER

The Petition for Termination of Probation of Denise Henderson, M.D., Physician’s and Surgeon’s Certificate Number A 67876, is GRANTED.

DATED: February 13, 2019

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TIFFANY L. KING
Administrative Law Judge
Office of Administrative Hearings